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23117 7590 08/02/2011 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANDREW JAY BEAN and JAMES LATIN SMITH

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Appeal 2009-014729  
Application 10/786,164  
Technology Center 3600

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Before WILLIAM F. PATE III, STEVEN D.A. McCARTHY,  
and MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Andrew Jay Bean and James Latin Smith (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-22 under 35 U.S.C. § 103(a) as unpatentable over Bach (U.S. Pat. No. 5,257,177, iss. Oct. 26, 1993) and Bodtke (U.S. Pat. Pub. No. 2003/0173151 A1, pub. Sep. 18, 2003), claims 1-17 and 22 under 35 U.S.C. § 103(a) as unpatentable over Bach and Ashworth (U.S. Pat. No. 4,179,010, iss. Dec. 18, 1979), and claims 2, 9, and 11 under 35 U.S.C. § 103(a) as unpatentable over Bach,

Bodtke or Ashworth, and Fulton (U.S. Pat. No. 5,390,104, iss. Feb. 14, 1995). We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

*The Invention*

The claims on appeal relate to a boom lift vehicle and process of controlling lifting functions.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of controlling a tower boom path in a boom lift vehicle, the boom lift vehicle including a telescoping tower boom pivotally coupled at one end to a vehicle base, and a main boom pivotally coupled to a tower boom nose pin at an opposite end of the tower boom, the method comprising raising and lowering the tower boom between a fully retracted position and a raised position by pivoting the tower boom relative to the vehicle base and by telescoping the tower boom, the raised position including any position up to a maximum angle of the tower boom relative to the vehicle base and a maximum boom length, wherein pivoting of the tower boom relative to the vehicle base and telescoping of the tower boom are performed simultaneously and independently such that the tower boom nose pin follows one of a plurality of predetermined paths depending on an angle of the main boom.

OPINION

We have carefully reviewed the Examiner's rejection in light of the Appellants' arguments and the Examiner's response. As a result of this review, we conclude that the Examiner failed to provide a sufficient showing that Bach would have described to a person having ordinary skill in the art

certain process steps or control system effect that the Examiner purports within the ground of rejection. Our reasons follow.

*Methods claims 1-9 and 22*

We concur with Appellant that Bach's "lifts" 1-3 show articulated and/or telescoping booms and Bach fails to mention a machine with a tower boom or even a single characteristic of such a machine. App. Br. 16. Likewise, we agree with Appellants that Bach describes its path of movement is divided into individual movement sequences from one desired position to the next desired position within a tolerance band. *Id.* We further agree that these desired positions do not relate to any predetermined path of a tower boom nose pin to follow a predetermined path depending upon an angle of a main boom. *Id.* We agree with the Appellants' submission to the Examiner's response that the Examiner's analysis of how a person having ordinary skill in the art would understand the combined teachings of Bach and Bodtke or Ashworth is without foundation. Reply Br. 2. The portions of Bach that the Examiner references for support relate to primarily maintaining an orientation of the load supported on a fork irrespective of the position or orientation of the vehicle. Bach, col. 3, ll. 25-56; col. 5, l. 61 – col. 6, l. 26. As such, we concur with Appellants' conclusion that a person having ordinary skill in the art would have considered the ability to maintain an orientation of a load as irrelevant to a predetermined path followed by a tower boom nose pin dependent on an angle of the main boom. Reply Br. 2. Accordingly, we agree with the Appellants' understanding of the Examiner's rejection that the Examiner does not provide any support for the conclusion that the claimed limitations of pivoting the tower boom relation to the vehicle base and telescoping of the tower boom are performed

simultaneously and independently such that the tower boom nose pin follows one of a plurality of predetermined paths depending on the angle of the main boom would have been obvious to a person having ordinary skill in the art given the teachings of Bach (alone) or Bach and Bodtke or Ashworth. The Examiner does not use Fulton to remedy the discussed deficiency with the combined teachings of Bach, Bodtke, and Ashworth.

*Apparatus claims 10-21*

Our discussion above is applicable to the apparatus claims. Independent claims 10 and 19 recite the control system effects the pivoting of the tower boom relative to the vehicle base and telescoping of the tower boom simultaneously and independently such that the tower boom nose pin follows one of a plurality of predetermined paths depending on an angle of the main boom. In addition to the deficiency noted above, we further find the Examiner's rejection devoid of any particular finding of fact for a control system having the above mentioned effectiveness given Bach (alone) or the combined teachings of Bach and Bodtke or Ashworth. The Examiner does not use Fulton to remedy the discussed deficiency with the combined teachings of Bach, Bodtke, and Ashworth.

**DECISION**

The Examiner's decision to reject claims 1-22 under 35 U.S.C. § 103(a) as unpatentable over Bach and Bodtke, claims 1-17 and 22 under 35 U.S.C. § 103(a) as unpatentable over Bach and Ashworth, and claims 2, 9, and 11 under 35 U.S.C. § 103(a) as unpatentable over Bach, Bodtke or Ashworth, and Fulton is reversed.

**REVERSED**

Klh